IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8300 of 1989
with
SPECIAL CIVIL APPLICATION No. 8406 of 1989
with
SPECIAL CIVIL APPLICATION No. 8407 of 1989
with
SPECIAL CIVIL APPLICATION No. 8408 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAMESHCHANDRA MANILAL PATEL

Versus

AHMEDABAD MUNICIPAL CORPN.

Appearance:
MR KS ACHARYA for Petitioners
MR BP TANNA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 24/03/2000

COMMON ORAL JUDGEMENT

Heard the learned advocates appearing for the respective parties.

2. In all these petitions, Rule has been issued by this Court on 28th January, 1989 making it returnable in the 2nd week of January, 1990. This Court, while making rule returnable had directed the parties to file separate petitions though one order passed by the Labour Court, Ahmedabad in different recovery applications has been challenged in the present petitions. Therefore, all these petitions are heard and decided today by this common judgment.

3. The brief facts of the present writ petitions are as under :-

3.1 Petitioners-Rameshchandra M.Patel, Muzaffarhusen Azfarhusen Saiyad, Manubhai Mangaldas Patel and Shantilal Chaturbhai Patel have filed Recovery Applications Nos. 1776 of 1980; 1777 of 1980; 1778 of 1980 and 1779 of 1980 respectively, before the Labour Court under the provisions of Section 33 (c) (2) of the Industrial Disputes Act, 1947 [hereinafter referred to as , `the Act']. Before the Labour Court, the petitioners have claimed that they are entitled to difference of amount of salary which arise because of Award passed by Arbitrary Hon'ble I.G Thakore, and therefore, there was a difference of Rs. 510/= for which all the petitioners were entitled to, and therefore, the said recovery applications were filed. Before the Labour Court, the respondent-Corporation had filed writen statement vide Exh. 5 and denied the claim of petitioners. Thereafter, the said recovery applications were consolidated vide Exh. 14 and on behalf of the petitioners, one Shri Rameshchandra Manilal Patel [petitioner herein] was examined before the Labour Court and raised all the contentions on behalf of the petitioners. On behalf of the respondent Corporation, vide Exh. 15, one Ramanlal Valjibhai was examined in support of their case. After considering the evidence on record and the facts, the Labour Court has come to the conclusion that the petitioners are not entitled to any amount from the respondent-Corporation and petitioners have failed to establish their pre-existing right to recovery any amount from the respondent-Corporation. The Labour Court has given reasons in support of its conclusion in paragraph 10 of its order dated 30th September, 1989, wherein all the recovery applications were rejected by the Labour Court, Ahmedabad.

In the present group of writ petitions, the said

Order dated 30th September, 1989 passed by the Labour Court is under challenge.

In the present matters, the respondent-Corporation has filed affidavit-in-reply of one R.V Khambala, Deputy Chief Accountant who was also examined by the Labour Court, and alongwith the affidavit in reply, the evidence at Exh. 15 of Shri Khambala was produced on record and the written statement which was filed before the Labour Court is also produced on record and the copy of the said reply was served upon the petitioners' advocate on 12th February, 1990.

Learned advocate Mr. Acharya appearing on behalf of the petitioners submitted that petitioners are entitled to get one additional increment as the same was given to another employee Shri Mangaldas who was junior to the petitioners, and therefore, the petitioners being senior employees, they are entitled to similar treatment and are entitled to get one increment in their salary. He submitted that the Labour Court has committed gross error in not entertaining the recovery application and that pre-existing right was established by the petitioners but the Labour Court has ignored it and had passed an order contrary to the record, and therefore, this Court has power to set-aside the order passed by the Labour Court in exercise of the powers conferred under Articles 226 & 227 of the Constitution of India.

Learned advocate Mr. Acharya has also read over before this Court, the entire evidence at Exh. 15, witness of respondent Corporation on page 21, Annexure-I and the reply. Mr. Acharya has also read the entire order passed by the Labour Court in Recovery Application. Learned Sr. Advocate Mr. Tanna appearing on behalf of the respondent-Corporation has pointed out that in the Award of I.G Thakore, who was arbitrator and one-man Pay Commission for revision of wages/pay scales, etc., this aspect is dealt with. As a matter of fact, the learned Arbitrator has recorded that different pay scales were available in the Corporation and it cannot be disputed by the present petitioners that the common pay scale of Rs. 260-400 with effect from 1.1.1976 came to be introduced only after 1.1.1976 and prior thereto, there were different scales of pay. He pointed out that there were two cadres for workmen viz., one grade for non-matriculate workmen which was Rs. 91-150 and for matriculate workmen, it was Rs. 100-170. Thus, it is very clear that two grades of workmen were in existence upto 31st December, 1975, therefore, when there were separate grades, the seniority in the grade is also

separate and further, there is a clear distinction between the SSC and Non-SSC workmen. Mr. Tanna further pointed out that the persons working in these two different grades were duly recognized as Matric workmen and non-matriculate workmen, and the said practice was abolished with effect from 1st January, 1976, in view of the suggestions made by the learned Arbitrator. Therefore, because of the fact that said distinction came to be abolished with effect from 1.1.1976, the petitioners-workmen cannot be allowed to jump in their increment and consequential fixation in the new scales. Mr. Tanna argued that the contention of the petitioners could have been fully justified if there were no different scales of pay and having regard to the principles of pay fixation non-matriculate as well as matric workmen are required to be placed in one Grade, i.e., of Rs. 260-400. Mr. Tanna submitted that the pay fixation of these workmen has been made on the basis of pay drawn on 31st December, 1975, and therefore, there cannot be given benefit of provisions of analogous to Rule 41A of Bombay Civil Services Rule or Circular No. 9 issued by the then Municipal Commissioner, since the principle laid down would not apply. Learned advocate Mr. Tanna further submitted that the grievance in respect to anomaly of the petitioners has been resolved by the respondent Corporation and that fact has been mentioned by the Corporation in its written statement in paragraph no. 7. In the said paragraph No. 7, it has been pointed out that workmen who were working in Engineering Department have made representation and in response thereto 20% of the posts have been converted in senior supervisors by resolution wherein petitioners were also converted from workman cadre to the senior supervisors and while fixing their salary in the post of Sr. Supervisor, whatever the anomaly were occurred, the same was resolved by the resolution passed by the Standing Committee dated 26th April, 1978 vide Resolution of the Municipality No. 188 dated 14.7.1978 and accordingly, the said anomaly in fixation of the pay of Sr. Supervisors were removed and increments were given to the petitioners and whatever difference were available were also paid to the petitioners and from that date, the petitioners were given pay scale of Rs.330-560 in the post of Sr. Supervisors, and therefore, according to Mr. Tanna, petitioners were not entitled to any further benefit as demanded in recovery application.

Perused the entire order made by the Labour Court and considered the arguments advanced on behalf of the respective parties. The Labour Court has given reasoned order in support of its conclusion. In paragraph 10 of

its Order, the Labour Court has observed that the petitioners have failed to justify their claim of getting higher wages. Not only that, there is a contradiction between the facts mentioned in the application and the facts stated in the affidavit filed by the petitioners. Further, it has been observed by the Labour Court, that petitioners have failed to produce on record copy of the Award in question and thus have no justified their claim as to how they were given less salary in comparison to other employees who are junior to them. The Labour Court has noted the fact that in the recovery applications, the petitioners have not pointed out in which post difference of increment had occurred and how it occurred and further, no details have been given to justify the claim of one additional increment. The Labour Court has observed that one additional increment drawn by Mangaldas does not give blanket right to the petitioners to get similar treatment. The Labour Court has considered the powers and jurisdiction vested in it under Section 33 (C) (2) of the Industrial Disputes Act and has observed that there is a vast difference between the powers of the Labour Court, while exercising the power under Section 33 (C)(2) and Section 10 of the Industrial Disputes Act, and therefore, the Labour Court has come to the conclusion that the petitioners have failed to pre-determine their right on the basis of the Award made by the learned Arbitrator, and therefore, the said Court cannot decide the industrial dispute which has been raised by the petitioners in the said recovery applications. The Labour Court has considered the evidence of the respondent Corporation and come to the conclusion that merely one additional increment has been granted to Shri Mangaldas, a co-employee, it does not make entitle the petitioners to get the same because petitioners have failed to establish their pre-existing right on the basis of the Award passed by the learned Arbitrator, and therefore, the said admission on the part of the witness has been ignored and not taken into consideration because it was not based upon any award. Considering the reasoning given by the Labour Court and the fact that said Shri Mangaldas Chimanlal Shah, who was SSC pass workman and the petitioners were admittedly non-SSC, and therefore, there was some difference of pay between said Shri Mangaldas and the petitioners, prior to the date of Award. The said witness has produced service-books of the petitioners and Shri Mangaldas and pointed out that the basic salary of Shri Mangaldas was fixed at Rs. 150/= in the pay scale of Rs. 100-170 as on 1.1.1975 as he was SSC pass workman and whereas, the basic salary of the petitioners-workmen were fixed at Rs. 145/= and Rs. 140/= respectively; as they were non-SSC workmen. It is

also required to be noted that as on 1.1.1982, the basic pay of Shri Mangaldas was Rs. 382/=, and therefore, his pay was fixed at Rs. 404/= in the pay scale of Rs. 330-560. Therefore, considering the entire evidence available on record and the reasoning given by the Labour Court; specifically the fact that the pre-existing right was not established by the petitioners before the Labour Court, I am of the opinion that the Labour Court has not committed any error while rejecting the said recovery applications under the provisions of Section 33 (C) (2) of the Industrial Disputes Act, 1947. Further, it is well established principle that the Labour Court cannot examine or determine or adjudicate any issue while exercising powers and jurisdiction under Section 33 (C) (2) of the I.D Act but such powers are with the Labour Court while exercising the powers under Section 10 of the Industrial Disputes Act. Therefore, when petitioners were not able to justify their claim before the Labour Court and their claim was not based upon any Award of the Arbitrator or it was not based upon any settlement or rules of the Corporation, then the Labour Court has rightly rejected the said recovery applications. Learned advocate Mr. Acharya is not able to point out any error or infirmity which has been committed by the Labour Court while rejecting the recovery applications. Therefore, according to my opinion, the finding of facts which has been given by the Labour Court, while exercising the powers under Sec. 33 (C) (2) of the Industrial Disputes Act does not require any interference from this Court in exercising of the powers under Art. 226 & 227 of the Constitution of India, and therefore, these petitions are required to be dismissed. Accordingly, these petitions stand dismissed. Rule is discharged with no order as to costs.

[H.K Rathod, J.]

Prakash*